Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

NO. 75-781

TEAMSTERS FREIGHT, TANK LINE & AUTOMOBILE INDUSTRY EMPLOYEES, LOCAL NO. 988, *Petitioner*

v.

OLIVER I. SABALA, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED and LEONARD RAMIREZ, *Respondents*

PETITION FOR WRIT OF CERTIORARI
To The United States Court of Appeals for the Fifth Circuit

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This Petitioner, Teamsters Freight, Tank Line & Automobile Industry Employees, Local Union 988, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above consolidated cases on Augst 4, 1975.

This case is before the Court under Docket No._____ upon Petition for Writ of Certiorari presented by two other Petitioners, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

and Southern Conference of Teamsters. In the event said Petition is granted, this Petitioner prays for the grant of this Petition as an integral part of the same litigation. In the event said Petition is denied, this Petitioner nevertheless prays for the grant of this Petition to review important issues additional to and separate from those involved in said cause.

I.

OPINIONS BELOW

The opinion of the District Court is reported in 362 F. Supp. 1142, and the opinion of the Court of Appeals in this case is reported in 516 F.2d 125. The opinions are reproduced in the Appendix to the companion case above identified.

II.

JURISDICTION

1. The judgment of the Court of Appeals sought to be reviewed was entered on August 4, 1975. Thereafter by order of this Court entered on October 30, 1975, the time for filing this Petition was extended until December 2, 1975.

2. The statutory provisions conferring jurisdiction on this Court to review the judgment in question is Section 1254 of Title 28 of the United States Code.

III.

QUESTION PRESENTED

Whether a local union becomes liable under 42 U.S.C. Sec. 1981 by authorizing a national bargaining committee

to act in its behalf in negotiating a collective bargaining contract and by signing the contract after its negotiation where the local union attempted to eliminate the offending aspects of the contract and committed no other act of commission or omission in violation of law?

IV.

STATUTES INVOLVED

1. 42 U.S.C. Sec. 1981 as follows:

> "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other."

2. The following sections of the National Labor Relations Act, as amended:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in the unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." (29 U.S.C. Sec. 159(a))
>
> "(b) It shall be an unfair labor practice for a labor organization or its agents . . . (3) to refuse to bargain collectively with an employer, provided it is a representative of his employees subject to the provisions of Section 9(a)." (29 U.S.C. Sec. 158 (b)(3))

The following section of the National Labor Relations Act as amended:

> "(a) To officers, agents, shop stewards and other representatives of the labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of its organization and its members and to manage, invest, and expend the same in accordance with its constitution and by-laws and any resolution of the governing bodies adopted thereunder." (29 U.S.C. Sec. 501)

V.

STATEMENT OF THE CASE

This suit was originally filed against Western Gillette, Inc. under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e, et seq. Later, three Unions were named as party Defendants under 42 U.S.C. Sec. 1981 only. The Union Defendants were the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, the Southern Conference of Teamsters, and this Petitioner, Local No. 988.

The suit was filed as a class action under Rule 23, Federal Rules of Civil Procedure. The District Court defined the class to be:

> "All Mexican-American and Blacks currently employed by Western Gillette during the pendency of this action as city drivers in Houston, Texas."

Following a trial before the Court, judgment was rendered for Plaintiffs against the Employer, Western Gillette,

Inc. for injunctive relief in regard to seniority practices and for damages to some members of the affected class. The District Court assessed no damages against any Union Defendant. However, the District Court did assess attorneys' fees, one-half against Western Gillette, Inc. and one-half against the three Union Defendants, to be divided equally among the latter.

Western Gillette, Inc. appealed from the determinations of liability against it but these were affirmed by the Court of Appeals. Western Gillette also appealed from the failure of the District Court to assess a portion of the damages against the Union Defendants. This part of the District Court's decision was remanded by the Court of Appeals with instructions to consider the appropriate liability of the Unions under that Court's previous decision in *Goodyear Tire & Rubber Co.*, 491 F.2d 1364 (C.A. 5, 1974). In the *Goodyear* decision, the Court of Appeals held that a Union which negotiated and executed an offending collective bargaining contract must share responsibility and liability for the resulting damages, the allocation of damages between Company and Union to be determined by the District Court in its discretion.

This Petitioner, on behalf of itself, appealed the assessment against it of attorney's fees on the claim that it was guilty of no act of commission or omission which would give rise to liability on its part. This appeal by Petitioner was rejected by the Court of Appeals as follows:

> ". . . Local 988 is the collective bargaining agent for the discriminatees who bring this action. The membership of Local 988 delegates its bargaining authority to the national bargaining committee and ratified the contract that the national bargaining

committee negotiated. The stimulus for the Local's actions was the recognition that the national bargaining committee could negotiate a better contract with Western Gillette than could the Local by itself. The result of these negotiations was a collective bargaining agreement that the District Court found discriminatory in its effects.

"Local 988 contends that the fact of its minority control, together with the fact that the Local did not initiate or negotiate the contracts, remove this case from application of the 'landmark decisions' of this Court . . . Local 988 also notes that it actively petitioned the national bargaining committee to merge the separate seniority systems. Given the Local's informed decision to participate in the national bargaining negotiation despite discrimination, because of the tangible economic benefits a national contract promised to its members, we find the argument unpersuasive. See Baxter v. Savannah Sugar Refining Corporation, (5 Cir., 1974) 495 F.2d 437, 443."

In the cited *Baxter* decision, the Court of Appeals held that good faith efforts on the part of an employer to eliminate the effects of its past discrimination are not a defense to a claim for back pay.

The District Court found as a fact that the Union Defendants had not violated their duty of fair representation under the National Labor Relations Act as amended. As to this Petitioner, the finding could hardly be otherwise, in view of the undisputed evidence that Petitioner Local No. 988 joined the national bargaining committee for bargaining purposes at the instruction of its membership and thereby assured for its membership the best possible economic benefits from collective bargaining while at the same time avoiding the hapless position of trying to

negotiate with a nationwide concern by itself. Simultaneously, Petitioner Local No. 988, under instruction of its membership, petitioned the national bargaining committee to merge the seniority lists of city drivers and over-the-road drivers retroactively, thereby exercising all of its available influence in favor of the seniority changes which were subsequently ordered by the District Court. The duly transmitted resolution was not concurred in. Only the Memphis, Tennessee local union and this Petitioner voted for the proposed seniority change.

Petitioner Local No. 988 was originally chartered on October 31, 1967. Previously, employees of Western Gillette, Inc. and other freight lines in the Houston, Texas area were members of other local unions which are not parties to this litigation. The chartering of Local 988 as a separate labor organization with jurisdiction of the freight industry in the Houston, Texas area resulted in a membership composed of 28% Mexican-American, 35% Black and 37% White. (R. 561-564; 584) Petitioner Local 988 consists of less than 200 road drivers and 2200 city drivers.

With its identity as a separate entity established, Petitioner Local No. 988 approached its first contract by delegating to the national bargaining committee authority to negotiate on a multi-union, multi-employer basis. The first contract turned out to be a 3-year agreement. The bargaining committee negotiated agreements covering four separate bargaining units, namely, road drivers, city drivers, garage employees, and office and clerical employees, on both a multi-employee and multi-union basis. The evolution of this bargaining structure over the last 25 years was established in the record. In short, bargain-

ing in the trucking industry proceeded through successive stages of local bargaining or company-by-company-bargaining until it matured into its present structure. The "multi-employers" are the various individual trucking companies of the freight industry which bargain for each of the four separate bargaining units described above. The "multi-unions" are the various local unions affiliated with the International Brotherhood of Teamsters all over the United States. The country is divided into Conferences, of which the Defendant, Southern Conference of Teamsters, is one.

The four separate contracts are applicable to each of the four separate bargaining units, each contract consisting of a National Master Freight Agreement and a Southern Conference Supplement. The procedure followed in authorizing the bargaining committees to function, in negotiating the contract, and in ratifying the contracts is fully described in *Brotherhood of Teamsters and Auto Drivers, Local No. 70, International Brotherhood of Teamsters and California Trucking Association, Inc.*, 1974 NLRB 674 aff'd 470 F.2d 509 (9th Cir., 1972) cert. den. 411 U.S. 923.

In summary, it was the act of Petitioner Local No. 988 in authorizing the national bargaining committee to negotiate the contract and its subsequent action in signing the contract which fixed its financial liability notwithstanding the fact that it had no practical or legal alternative to the joinder in the negotiations and no legal right to refuse to sign once the negotiations had successfully culminated in a contract which had been ratified by the national membership of the Union. This was so, the Court held, even though Petitioner Local No. 988 did request the bargaining committee to merge the seniority of city and

road drivers. Petitioner Local No. 988 was simply outvoted. The principal finding against the Company and the Unions was the maintenance of separate seniority rosters for road drivers and city drivers, which separate rosters allegedly served to perpetuate the present effects of the employer's discriminatory hiring practices in the past in concentrating Black employees in the city driver jobs and White employees in the over-the-road jobs.

As to attorneys' fees, moreover, the Court remanded the case to the District Court to determine whether under *Alyeska Pipeline Co. v. Wilderness Society*, 95 S.Ct. 1612 (1975) the Union defendants are liable for attorney's fees under Section 1981 on account of bad faith.

Petitioner Local 988 is not only not White-dominated but it is fully integrated in its meetings and functions with voting and actual control in the hands of its membership, the majority of which were either Black or Mexican-American. It is integrated at every structure of its official life, including its officers, job stewards, and clerical office help.

VI.

REASONS FOR GRANTING THE WRIT

1. This case presents another important phase of the accommodation and reconciliation between the National Labor Relations Act on the one hand and the civil rights act on the other. It also presents in sharp relief the question of when and under what circumstances a local labor organization renders itself liable under either or both of the civil rights acts by joining the most effective bargaining structure in the interest of obtaining rich economic rewards for the benefit of its members. In addition, what

is the financial liability of a local labor organization when it follows the dictates of its rank and file members, which dictates are lawful and proper in every respect? Finally, does either one of the civil rights acts authorize the assessment of financial liability on behalf of an affected class when the members of that affected class constitute a part of the controlling group of labor organization itself?

2. The class members who participated in the Union meetings had the power to refuse to participate in national negotiations or to withdraw from them before the 1970 negotiations were entered upon. The unanimous vote of the membership instructed the Local Union officers who forwarded the appropriate bargaining authorizations to the bargaining committee, thus mandating the delegation of bargaining authority. If the Local Union officers had failed to properly execute the mandate of the membership, they would have violated the Landrum-Griffin amendments to the National Labor Relations Act, 29 U.S.C.A. Sec. 501, as well as the Union Constitution. Section 501 creates a fiduciary obligation in union officers to follow and execute the mandates of the union constitution, the by-laws, and the resolutions of the union's governing bodies adopted thereunder. *Sabolsky v. Budzanoski*, 457 F.2d 1245 (C.A. 3, 1972) cert. den. 409 U.S. 853 (1972). The ruling below authorizes a few members of the Union to present themselves as class representatives of the very class which participated in issuing the offending instructions to the Local Union and to recover for the class attorney's fees and/or damages from the Local Union treasury on account thereof.

3. Having entered upon the bargaining pursuant to express instruction of the unanimous membership, Petitioner Local No. 988 was duty-bound to sign the contract following its negotiation and ratification on a nationwide basis. *Brotherhood of Teamsters & Auto Driver, Local No. 70, International Brotherhood of Teamsters and California Trucking Association, Inc., supra.* This case held that a Teamster local union which had participated in bargaining, as did this Petitioner, violated Section 8(b)(3) of the National Labor Relations Act as amended, 29 U.S.C.A. Sec. 158(b)(3), when it refused to sign the contract. The decision below holds that Petitioner Local No. 988 rendered itself liable when it discharged the legal duty of signing the contract. The decision presents a serious conflict between the National Labor Relations Act as amended and the civil rights acts and threatens to disturb the well-developed body of law under the former which requires the execution of a contract which has been successfully negotiated to its conclusion. At the very least it would be highly disruptive to industrial peace to require participating local unions in multi-union bargaining situations to refuse to sign duly bargained contracts by quibbling about their legality on pain of financial liability.

4. To the extent that the decision of the Court of Appeals fixes liability on Petitioner Local No. 988 because it delegated authority to the national bargaining committee and because it executed the subsequently-negotiated contract it conflicts with the decision of this Court in *Emporium Capwell Co. v. Western Addition Community Organization*, 95 S.Ct. 977 (1975) decided February 18, 1975. The operative facts which create financial liability, according to the Courts of Appeals, are routine steps in the statutory collective bargaining procedures contemplated by the National Labor Relations Act. In the *Em-*

porium Capwell case this Court made clear that the exclusive, majority-controlled bargaining procedures of the Taft-Hartley Act as well as the internal regulations of unions in the Landrum-Griffin amendments are still intact notwithstanding the passage of Title VII of the Civil Rights Act of 1964. In that decision at Footnote 26, 95 S.Ct. at page 990 as in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) at page 48, Footnote 9, this Court has twice noted Senator Clark's interpretive memorandum concerning Title VII that "nothing in Title VII or anywhere else in this Bill affects rights and obligations under the NLRA . . ." Under these authorities it was not incumbent upon Petitioner Local No. 988 to refuse to participate in the existing bargaining structure, or to forego the economic benefits thereof, or to go it alone in a futile effort to contest economically with an industrial giant like the trucking industry. If such action is demanded by Title VII it is certain that the chances for industrial strife are enhanced while the benefits of collective strength are eliminated. Both results would conflict with statutory policies reviewed in the *Emporium Capwell* decision.

5. The result reached by the Court of Appeals is both impractical and unfair. We have here the assessment of back pay and attorney's fees against the one local union which attempted to merge the seniority lists while all the other local unions which voted down the efforts of Petitioner Local No. 988 escape liability as local union entities as a result of not being named parties to the litigation. Furthermore, Petitioner Local No. 988 and its members are the victims of double liability and are thus treated more harshly than other segments of the Union. This is so because each member of the local union is the owner of a part of the assets of the International Union,

a part of the assets of the Southern Conference of Teamsters and a part of the assets of his local union. Assuming that financial liability may properly be imposed upon some entity of the Union structure, no one can justify the imposition of double liability upon a single local Union, especially one that has taken appropriate steps to achieve compliance with Title VII. The assessment of damages against Petitioner Local No. 988 does effectuate such double liability upon its members in comparison to the members of other local Unions.

6. Both Courts below ascribed good faith to Petitioner Local No. 988 in its effort to merge the seniority lists. The Court of Appeals, however, erroneously applied to a local union the principle that good faith is not a defense for an employer who violates Title VII. It is submitted that an employer's attempt to undo its past discriminatory practices cannot be equated with the posture of a local union situated as this Petitioner. In a realistic sense a local union, as an unincorporated association, cannot be treated as a separate and independent agency apart from its membership. This is so because its constitution is a contract which the courts must enforce as between the members themselves and between the members and the association. The good faith holding of *Baxter v. Savannah Sugar Refining Corporation*, supra, is in commonsense inapposite to a local union which is minority-dominated and the dominating minority of which includes or coincides with the affected class in the litigation.

7. By virtue of the decision of the Court of Appeals, the stage is now set for the financial paralysis of Petitioner Local No. 988. Having incurred financial liability under Title VII by virtue of its delegation of authority to the

national bargaining committee and by having signed the contract, it is likewise exposed to liability to the employees of all the other trucking concerns covered by the same collective bargaining contract. Thus practically the entire membership of Petitioner Local No. 988 has a Title VII cause of action against itself on account of the collective bargaining contract in question. While Petitioner has confidence that most members of the local Union will realize that their best interests are not served by crippling the local Union financially so that it cannot function for their over-all protection, we may be sure that there will be one or more employees in each freight terminal who will give priority to the financial rewards of tendering himself to the Court as a class representative for the collection of damages and attorney's fees. This result is grossly unfair and violative of the applicable statutes in the case of this Petitioner.

VII.

CONCLUSION

Petitioner prays that the Writ of Certiorari be issued.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with rules of the Court, three copies of the foregoing Petition for Writ of Certiorari have been served upon the following counsel of record by placing same in the United States Mail, postage prepaid at the addresses shown below, on this the ____ day of _____, A.D. 1975.

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